IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.813 of 2004

Mrs.Mangal B. Thite ...Appellant

V/s

Smt.Kausalyabai E.Jagtap

and Ors. ...Respondents

Shri R.R.Bhansale for Appellant

Mr Vinod Savaji with Shri P.B.Shah for Respondent nos.1 to 7

CORAM:A.S.OKA,J.

DATED:14th Feb. 2005

P.C.:-

1. Heard the learned Counsel appearing for the parties.

2. The appeal was adjourned repeatedly as parties were trying to explore the possibility of settlement. The Counsel appearing for the parties have informed me today that possibility of amicable settlement is ruled out. Hence I have taken up the appeal for admission today.

3. The Appellant is the original plaintiff. The

challenge in the suit is to release deed dated 30-12-1986 executed by the Appellant along with her two sisters. There are consequential prayers for partition. The Appellant is the daughter of one Eknath D. Jagtap. The Respondent no.1 herein is the widow of late Eknath. Respondent nos. 2 and 3 are the sons of Eknath and Respondent nos.4 to 6 are sisters of the Appellant. The Respondent no.7 is the developer appointed to develop the suit property. It is the case of Respondent nos.1 to 3 that a registered deed of release dated 30-12-1986 was executed by the Appellant and her 2 other sisters by which the Appellant and her sisters relinquished their right, title and interest in the property in dispute in favour of Respondent nos.1 to 3 herein. It is an admitted position that the said document is duly registered in the office of the Sub Registrar of Assurances, Haveli no.1, Pune and the document is executed in Marathi language which is the language of the parties. Initially a suit was filed by the Appellant in the year 2002. That suit was allowed to be withdrawn with liberty to file a fresh suit and accordingly fresh suit has been filed.

4. The learned trial Judge held that the Appellant has failed to prove prima facie case. The learned Judge has also referred to delay in approaching the Court. The learned Counsel appearing for the Appellant submitted that there is no delay in filing the suit as immediately on publication of the public notice, objection was

raised by the Appellant. Thereafter a suit was filed which was required to be withdrawn as the Respondent no.7 builder was not impleaded as a party. There was a delay in disposing of the application for withdrawal of the suit as the said application was opposed by the Respondent nos.1 to 3. He, therefore, submitted that the suit filed in the year 2003 does not suffer from delay and latches.

5. The learned Counsel for the Respondents has supported the impugned judgment and order passed by the trial Court. The learned trial Judge in para 7 of the impugned order has stated thus :-

> "It is also necessary to mention here that in spite of having knowledge that defendant no.1 to 3 are entered into development agreement with defendant no.7 but plaintiff deliberately did not impleaded defendant no.7 in the earlier suit and allow him to proceed with the said development agreement. Since the defendant no.7 enter into agreement with defendant no.1 to 3 he was bound to comply the said agreement. In part performance of the said agreement he has paid an amount of Rs.30,00,000/- to the defendant no.1 to 3 and invested an amount of Rs.69,30,808/- till the date of filing present suit. The construction of five storeyed building is

already completed. The defendant no.1 has booked flats for the perspective purchasers. The defendant no.7 has created third party interest in the suit property. The list of third party interest in the suit property. The list of third parties are given by the defendant at Exh.30/4. Therefore, according to the defendant, the application of plaintiff for temporary injunction is become unfructuous."

6. The learned trial Judge has also noted the fact that the suit property was recorded in the names of Respondent nos 1 to 3 and Respondent no.7 has entered into contract of development with the Respondent nos.1 to 3 after taking all proper care and precaution. The learned trial Judge has accepted the case of the Respondent on.7 that lacs of rupees have been invested by them and the construction has made substantila progress. Moreover, third party interests in respect of flats in the building already constructed have been created by the Respondent no.7.

7. There is a registered document of release executed by the Appellant in the year 1986. She was not the only person to execute the said document but her two sisters have also joined her in the execution of the said document. As stated earlier the document is executed in

Marathi language and therefore the Appellant cannot say that she was not aware about the contents of the document. Considering all these facts the learned trial Judge has held that no prima facie case was established by the Appellant.

8. The learned Counsel appearing for the Appellant stated that notice of lis pendens has been duly registered in the office of the Sub Registrar. In this view of the matter, no interference is called for in this appeal. It is obvious that all further actions of the Respondents in respect of the suit property are naturally subject to final result of the suit. Subject to the above observations the Appeal is dismissed with no order as to costs.

(A.S.OKA,J.)